

## BOIES, SCHILLER &amp; FLEXNER LLP

575 Lexington Avenue • 7th Floor • New York, NY 10022 • Ph. 212 446.2300 • Fax 212.446.2350

September 9, 2011

BY FACSIMILE (212) 805-7948

Hon. Judge Richard J. Holwell  
United States District Court Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/13/11

Re: Case No. 1:11-CV-06052-RJH and related appeals

Dear Judge Holwell:

We represent Barclays Capital Inc. and Barclays Bank PLC (collectively, "Barclays") with respect to its appeals from certain orders entered by the Bankruptcy Court on July 15, 2011. The Barclays appeals and the cross-appeal filed by the Trustee for the SIPA liquidation of Lehman Brothers Inc. (the "Trustee") have been docketed as Case Nos. 11-CV-06052 and 11-CV-06053, and Case No. 11-CV-06052 has been assigned to Your Honor.<sup>1</sup>

We write to inform the Court of related appeals that have been assigned higher docket numbers, which the parties have agreed are related and should be consolidated. These appeals all arise out of a single trial conducted before Judge Peck in the Bankruptcy Court, in which the court adjudicated claims and cross-claims relating to its September 22, 2008 order ("Sale Order") approving the sale of most of the assets of Lehman Brothers Inc. ("LBI") to Barclays ("Sale Order Litigation"). The Sale Order Litigation included:

- (a) Claims by Lehman Brothers Holdings Inc. ("LBHI"), the Official Committee of Unsecured Creditors of LBHI (the "Committee"), and the Trustee to modify the Sale Order pursuant to Federal Rule of Civil Procedure 60(b);
- (b) Claims by Barclays, and competing claims by the Trustee, for interpretation and enforcement of the Sale Order and the Purchase Agreement it approved concerning billions of dollars of assets covered by the express terms of the Purchase Agreement and Sale Order, which the LBI Trustee claims it was not required to transfer to Barclays.

<sup>1</sup> Case Nos. 11-CV-06052 and 11-CV-06053 were initially referred to Judge Cote based upon Barclays' request that they be treated as related to Judge Cote's March 2009 decision to affirm the Bankruptcy Court's Sale Order that was centrally at issue in the litigation below. On September 8, 2011, Judge Cote declined to accept these appeals as related to the prior case, and Case No. 11-CV-06052 was assigned to Your Honor.

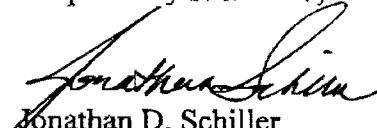
BOIES, SCHILLER &amp; FLEXNER LLP

On July 15, 2011, the Bankruptcy Court entered a series of final orders resolving these various claims. In addition to the Barclays appeal and Trustee cross-appeal referenced by the two case numbers listed above, LBHI filed three separate appeals and the Committee filed three separate appeals from certain of the July 15, 2011 orders. One of the LBHI appeals has been docketed as Case No. 11-CV-06118, and assigned to Judge Gardephe; the other LBHI appeals have been docketed as Case Nos. 11-CV-06233 and 11-CV-06234 and referred to Judge Gardephe as possibly related to Case No. 11-CV-06118. One of the Committee's appeals has been docketed as Case No. 11-CV-06117 and assigned to Judge Swain; the other Committee appeals have been docketed as Case Nos. 11-CV-06250 and 11-CV-06251 and referred to Judge Swain as possibly related to Case No. 11-CV-06117.

The parties have agreed that all of the above-mentioned appeals (including those not yet assigned a judge) are related to one another, and that it is in the interests of justice and efficiency for them to be consolidated before a single judge. Because the lowest docket among all these related appeals (11-CV-06052) has been referred to Your Honor, we will be requesting that all of the other related appeals be transferred to Your Honor, in accordance with Rule 13(d) of this Court's Rules for the Division of Business Among District Judges.

In addition to informing Your Honor of these related appeals and the request for consolidation, we write to request that Your Honor endorse an agreement among the parties that no opening brief in Case No. 11-CV-06052, which is already referred to Your Honor, be due before October 21, 2011. At present, the opening brief in that case would otherwise be due September 16, 2011. The parties have also agreed that this same extension should apply to the LBHI and Committee appeals. Once the Court has determined whether to consolidate the various appeals, the parties should be in a position to propose a complete schedule with deadlines for opposition and reply briefs, and any requested page limit enlargements.

Respectfully submitted,

  
Jonathan D. Schiller

Extension to  
October 21, 2011  
granted

cc: Hon. Judge Gardephe (via fax)

Hon. Judge Swain (via fax)

William Maguire (counsel for the Trustee) (via fax and e-mail)

Robert Gaffey (counsel for LBHI) (via fax and e-mail)

James Tecce (counsel for the Committee) (via fax and e-mail)

  
RICHARD J. HOLWELL  
UNITED STATES DISTRICT JUDGE